HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI

WRIT PETITION No. 7085 of 2003

Between:

K. Venkata Ramana Prasad

... Petitioner

And

Andhra Pradesh Central Power Distribution Company Ltd.,
Rep. by its Chairman & Managing Director,
Hyderabad & another

... Respondents

:: O R D E R ::

Counsel for the petitioner : Shri P. Sridhara Rao for
Shri A.K. Jaya Prakasa Rao

Counsel for the respondents : Shri Samineni Kishore

07.03.2007

This is a petition for quashing communication No.PO/Adm./S3/319/2000, dated 7-2-2000 vide which Superintending Engineer, Operation Circle, Anantapur (respondent No.2) rejected the petitioner's candidature for appointment as Sub-Engineer.

The petitioner possesses the qualification of Diploma in Mechanical Engineering. He worked as contract labour in Anantapur Division of the Andhra Pradesh State Electricity Board (for short, 'the Board') from 5-4-1996 to 30-6-1998. The details of the agreements and the works in relation to which the petitioner worked as contract labour are as under:

Other than Generating Stations

05-04-96 to 30-4-96	K2 Agt.No.01/96-97 of DE/O/ATP	Operation and Maintenance of shift duties of 33/11 KV SS. Korrakodu of R.West/Sub-Division/ Anantapur (ADE/R.West/ Anantapur)
01-05-96 to 19-2-97	LS Agt.No.01/96-97 of DE/O/ATP	-do-

Generating Stations (P.A.B.R.H.E.S./Anantapur)

20-2-97 to 31-3-97	LS Agt.No.26/96-97	Providing Assistance in Operation and Maintenance of 2 x 10 MW Generating Station equipment at PABRHES
01-4-97 to 31-5-97	LS Agt.No.09/97-98	-do-
01-6-97 to 30-9-97	LS Agt.No.09/97-98	-do-
1-10-97 to 31-3-98	LS Agt.No.25/97-98	-do-
01-4-98 to 30-6-98	LS Agt.No.04/98-99	-do-

In furtherance of the policy contained in B.P.Ms.No.36, dated 18-5-1997, the petitioner was called for interview on 3-11-1997 for regular appointment against 50% vacancies in the cadre of Sub-Engineers. He was interviewed by the selection committee, but his candidature was rejected on the ground that he was not on rolls as on 6-12-1996 in generating stations in terms of B.P.Ms.No.312 dated 24-2-1998 read with Board's Memo dated 14-3-1998 and he was not on the rolls as on 18-5-1997 in terms of B.P.Ms.No.36, dated 18-5-1997 other than generating stations. This was conveyed to him by respondent No.2 vide letter dated 7-2-2000.

On receipt of the aforementioned communication, the petitioner represented to Superintending Engineer, Operation, A.P. Transco, Anantapur for reconsideration of his case. The latter vide his communication dated 24-9-

1999 addressed to Additional Secretary, A.P. Transco, Kadapa Zone, Kadapa also recommended the petitioner's case for appointment as Sub-Engineer, but the concerned authority did not agree to review the decision contained in communication dated 7-2-2000 and again rejected the petitioner's claim vide letter dated 6-1-2001.

In the affidavit filed by him, the petitioner has relied on the contents of letter dated 24-9-1999 sent by Superintending Engineer, Operation, A.P. Transco to the Additional Secretary, A.P. Transco and letter dated 8-12-1999 sent by the Chief Engineer, Electricity to the same officer and averred that rejection of his candidature is liable to be declared illegal and nullified on the ground of discrimination. He has also relied on clarification issued by A.P. Transco vide Memo dated 3-12-1999 and averred that the respondents are duty bound to re-examine his case in the light of the fact that he fulfilled the conditions of eligibility prescribed in B.P.Ms.No.36, dated 18-5-1997, B.P.Ms.No.312, dated 24-2-1998 and the Board's Memo dated 14-3-1998.

In the counter-affidavit filed by him, Shri B.S. Rao, Superintending Engineer (Operation Circle), A.P. Transco has averred that the petitioner's candidature was rightly rejected because he was not on the rolls in the generating station as on

6-12-1996. The stand taken by the respondents is reflected in paragraph 5 of the affidavit of Shri B.S. Rao, which is reproduced below:

> "5. Adverting to paras 7 and 8 of the affidavit, it is true to say that the P.A.B.R.H.E.S. is under the administrative control of Superintending Engineer, Operation, Anantapur upto reforms were introduced in A.P.S.E.B. It is to submit that the then APSEB has issued separate orders for absorption of contract labour engaged in Operation circles and Generating Stations.
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> The B.P.Ms.No.36, dated 18-5-1997 and working instructions in B.P.Ms.No.271, dated 31-12-1997 has been issued for absorption of contract labour engaged in operation circles under 50% vacancies as on 18-5-1997. Further, the B.P.Ms.No.37, dt.18-5-1997 and instructions in B.P.Ms.No.312, dt.24-2-98 has been issued separately for absorption of contract labour engaged in 33 abolished categories as per the G.O.Ms.No.41, dated 23-9-1996 in Generating Stations.
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> Further it is to submit that the petitioner put in his representation dated Nil to the Addl. Secretary, A.P. TRANSCO, Vidyuth Soudha, Hyderabad to consider his case for appointment as Sub-Engineer. The Addl. Secretary in his letter dt.27-7-99 requested the Superintending Engineer/OP/Anantapur (i.e. 2nd respondent) to furnish his remarks on the representation of the petitioner. Accordingly, the SE/O/ATP i.e. 2nd respondent has furnished his remarks to Addl. Secretary on 24-9-99 duly enclosing the copies of the service certificates produced by the petitioner for perusal.
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> After careful examination of the particulars of engagement as contract labour of the petitioner Sri K. Venkata Ramana Prasad, the A.P. TRANSCO informed that the petitioner is neither eligible for absorption in Generating Stations as Sub-Engineer as he was not on rolls in the Generating Stations as on 6-12-96 which is one of the essential requirements in terms of B.P.Ms.No.312, dated 24-2-98 read with Bd's Memo No.14-3-98, nor in Operation Circle of Anantapur under 50% quota as he was not on rolls as on 18-5-97 which is pre-requisite condition in terms of B.P.Ms.No.36, dt.18-5-1997 and which is must in terms of B.P.Ms.No.271, dt.31-12-1997.
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> Accordingly, the 2nd respondent i.e. SE/O/ATP has issued speaking orders to the petition dt.7-2-2000 duly rejecting his case for absorption on Sub-Engineer."

I have heard learned counsel for the parties and perused the record. Admittedly, the petitioner possesses the academic qualification prescribed for appointment on the post of Sub-Engineer. It is also not in dispute that he had continuously worked as contract labour in Anantapur Division of the Board from 5-4-1996 to 30-6-1998. The only area of its disagreement between the parties relates to the petitioner's working in the generating stations and other than generating stations during the particular period. In this context, it is apposite to mention that during his entire tenure of working as contract labour, the petitioner remained posted in Anantapur Division and he had continuously worked from 5-4-1996 to 30-6-1998. This is clearly evinced from the extracts of letter dated 24-9-1999 sent by the Superintending Engineer, Operation, A.P. Transco, Anantapur, the relevant portions of which are reproduced below:

"With reference to the memo 1st cited, I submit that at the time of interview, Sri K. Venkataramana Prasad, Contract Labour has produced service certificate stating that he has worked as contract labour at P.A.B.R.H.E.S. Generating Station for the period from 20-2-97 to 31-3-97 only. Based on the service certificate that the contract labour is not on rolls as on 23-09-96 which is a must in terms of B.P.Ms.No.272, Dt: 31-12-97, his case was not considered for appointment.

Subsequently, the contract labour in his representation Dt: 25-05-99 to Superintending Engineer/Operation/ Anantapur represented that he has not submitted the service certificate issued by the Asst. Divl. Engineer/R.West/Anantapur regarding his working in Operation & Maintenance of the Sub-Station shift duties at 33/11 KV SS. Korrakodu at PABR under the control of Divisional Engineer/Operation/Anantapur for the period from 05-4-96 to 19-2-97, and he is submitting the service certificates issued by the concerned Asst. Divl. Engineers and requested to issue appointment orders based on the service certificate produced later. In this connection, it is to

submit that based on the service certificate produced by the contract labour at present, he is not on rolls as on 18-05-97, which is a must in terms of B.P.Ms.No.271, Dt:31-12-97 at other than Generating Stations. Hence, he is not on rolls as on 23-09-96 in terms of B.P.Ms.No.272, Dt:31-12-97 and also as on 18-5-97 in terms of B.P.Ms.No.271, Dt:31-12-97. But, as per the service certificate produced by the contract labour, the contract labour was engaged continuously at A.P.S.E.B. for the period from 05-04-96 to 30-06-98 both at Generating Stations and other than Generating Stations as detailed below.

Other than Generating Stations

05-04-96 to 30-4-96	K2 Agt.No.01/96-97 of DE/O/ATP	Operation and Maintenance of shift duties of 33/11 KV SS. Korrakodu of R.West/Sub-Division/ Anantapur (ADE/R.West/ Anantapur)
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01-6-97 to 30-9-97	LS Agt.No.09/97-98	-do-
1-10-97 to 31-3-98	LS Agt.No.25/97-98	-do-
01-4-98 to 30-6-98	LS Agt.No.04/98-99	-do-

The service certificates produced by Sri K. Venkataramana Prasad, contract labour for having worked in the above periods the Photostat copies are enclosed for perusal please. During above period, P.A.B.R. is under the control of Superintending Engineer/Opn./Anantapur."

As is evident from letter dated 8-12-1999, even the Chief Engineer, A.P. Transco, Kadapa, supported the cause of the petitioner.

When the attention of Shri Samineni Kishore, learned counsel for the respondents was drawn to letter dated 24-9-1999 sent by the Superintending Engineer and letter dated 8-12-1999 sent by the Chief Engineer to Additional Secretary, A.P. Transco, he fairly admitted that in view of the contents of those letters, the petitioner's eligibility to be considered for appointment as Sub-Engineer cannot be doubted.

In view of the above, I am convinced that the rejection of the petitioner's candidature for appointment to the post of Sub-Engineer is legally untenable and is violative of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution of India.

In the result, the writ petition is allowed. Letter No. PO/Adm./S3/319/2000, dated 7-2-2000 issued by the Superintending Engineer (Operation), Anantapur is declared illegal and quashed. The respondents are directed to re-consider the petitioner's case for appointment as Sub-Engineer by treating him eligible for that post and pass appropriate order within two months keeping in view the fact that similarly situated persons had been appointed as regular Sub-Engineers vide order dated 17-12-1999.

G.S. SINGHVI, CJ

March 07, 2007

svs